

CLEARCORRECT OPERATING, LLC v. ITC, Appeal No. 2014-1527 (Fed. Cir. November 10, 2015). Before Prost, Newman and O'Malley. Appealed from ITC.

Background:

Align filed a §337 complaint with the ITC against ClearCorrect alleging infringement of Align's patents relating to methods of producing digital models for dental treatment plans. An Administrative Law Judge (ALJ) determined that some of the claims of the patents were infringed, and that the ITC had authority to order ClearCorrect to stop electronically importing digital models into the United States.

In the Initial Determination, the ALJ concluded that the accused products (i.e., the digital models that were electronically transmitted from Pakistan to the United States) are "articles" over which the ITC has jurisdiction (the Tariff Act of 1930 provides the ITC with authority to remedy only those unfair acts that involve the importation of "articles" as described in 19 U.S.C. § 1337(a)). Both ClearCorrect and Align filed petitions for ITC review. The ITC initiated a review of the entire Initial Determination and the ITC terminated the investigation finding that at least some of the patent claims were infringed. The ITC also agreed with the ALJ that the ITC had jurisdictional authority. The parties appealed.

Issue/Holding:

Did the ITC err in concluding that "articles" should be construed to include electronic transmission of digital data? Yes, reversed.

Discussion:

The Federal Circuit determined that the ITC's decision to expand the scope of its jurisdiction to include electronic transmissions of digital data runs counter to the "unambiguously expressed intent of Congress." To reach its determination, the Federal Circuit applied the two-step deference-determination framework set forth in *Chevron* and found that the ITC failed to properly analyze the plain meaning of "articles," failed to properly analyze the statute's legislative history, and improperly relied on Congressional debates.

The Federal Circuit indicated that it is clear that "articles" means "material things," whether when looking to the literal text or when read in context "with a view to [the term's] place in the overall statutory scheme." Additionally, the Federal Circuit recognized that while electronic transmissions have some physical properties—for example an electron's invariant mass is a known quantity—commonsense dictates that there is a fundamental difference between electronic transmissions and the "material things" falling within the scope of the ITC's jurisdiction over imported physical goods. Thus, because the ITC repeatedly and unreasonably erred in its analysis of the term "article," and failed to provide a reasoned explanation for its definition of "articles," the Federal Circuit concluded that the ITC's analysis does not warrant deference.

Accordingly, the Federal Circuit reversed and remanded the ITC's decision and concluded that the ITC does not have jurisdiction over this investigation.